

ORDINANCE NO. 28466

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING ORDINANCE NO. 26136, WHICH ORDINANCE APPROVED A DEVELOPMENT AGREEMENT WITH CISCO TECHNOLOGY, INC. RELATIVE TO THE DEVELOPMENT OF REAL PROPERTY IN NORTH SAN JOSE AND AMENDING ORDINANCE NO. 28339, WHICH ORDINANCE AMENDED SAID DEVELOPMENT AGREEMENT TO EXTEND A CERTAIN OCCUPANCY DEADLINE CONTAINED IN THE ORIGINAL DEVELOPMENT AGREEMENT AND RATIFIED THE EFFECTIVENESS OF THE ORIGINAL DEVELOPMENT AGREEMENT, IN ORDER TO FURTHER AMEND THE ORIGINAL DEVELOPMENT AGREEMENT, AS AMENDED, TO MODIFY A CERTAIN OCCUPANCY CONDITION CONTAINED AT SECTION 1.(C)(1) OF THE ORIGINAL DEVELOPMENT AGREEMENT AND AUTHORIZING THE CITY CLERK TO EXECUTE THE SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. This Ordinance is adopted under the authority of California Government Code Section 65868 and pursuant to the provisions of City of San Jose ("City") Ordinance No. 24297 (the "Enabling Ordinance"), both of which provide for the ability to adopt and amend development agreements and set forth procedures and requirements for the consideration of those agreements.

SECTION 2. This Ordinance incorporates by reference that certain "Second Amendment to Development Agreement By and Between the City of San José and Cisco Technology, Inc. Relative to the Development of Real Property in North San José (the "Second Amendment"), which Second Amendment is attached hereto as Exhibit "A." This Second Amendment, together with that certain "First Amendment to Development Agreement By and Between the City of San José and Cisco Technology, Inc. Relative to the Development of Real Property in North San José (Alviso)," made and entered into by the parties thereto as of July 21, 2008 (further described in Section 3 hereinbelow, the "First Amendment") and that certain Original Development Agreement (also described in Section 3, below) made and entered into as of November 13, 2000 are sometimes collectively referred to herein as the "Amended Development Agreement."

SECTION 3. The City Council finds that the following are the relevant facts concerning the proposed Second Amendment:

- A. A “Development Agreement By and Between the City of San José and Cisco Technology, Inc. Relative to the Development of Property in North San José (Alviso)” was approved by City under City Ordinance No. 26136 and was entered into by City and Cisco Technology, Inc., a California corporation (“DEVELOPER”) as of November 13, 2000 (the “Original Development Agreement”).
- B. A “First Amendment to Development Agreement By and Between the City of San José and Cisco Technology, Inc. Relative to the Development of Real Property in North San José” was approved by City under City Ordinance No. 28339 and was entered into by City and DEVELOPER as of July 21, 2008 (the “First Amendment”).
- C. A portion of the real property subject to the Amended Development Agreement and described therein (the “Subject Property”) is currently owned by Cisco Technology, Inc., a California corporation and is and will be subject to those certain vested elements set forth in Exhibit C to the Original Development Agreement, which vested elements provide for certain industrial park and combined industrial/commercial uses on the Subject Property.

- D. A term of the Original Development Agreement memorialized at Section 1.C (1) therein contains a requirement that “part of the Subject Property shall be occupied as part of the San Jose corporate campus of DEVELOPER within eight (8) years of the effective date of Ordinance No. 26136 . . . [.]” and that the Original Development Agreement would become null and void if DEVELOPER failed to fulfill that occupancy condition. CITY and DEVELOPER amended that provision by the First Amendment to extend the timing for fulfillment of that condition to December 31, 2008 and now desire to further amend that term of the Original Development Agreement, as amended by the First Amendment, to provide that certain increases in the employees of DEVELOPER employed in City satisfy the occupancy condition set forth in said Section 1.(C)(1) of the Original Development Agreement, as amended by the First Amendment.

SECTION 4. This Council, based upon analysis of the facts set forth above, finds and concludes that amending Section 1.(C)(1) of the Original Development Agreement, as amended by the First Amendment and as set forth in the Second Amendment attached hereto as Exhibit A, to allow increases in the number of employees employed by DEVELOPER in City to satisfy the occupancy condition set forth in said Section 1(C)(1) will not adversely impact CITY, DEVELOPER, nor the development of the Subject Property in the manner described in the Original Development Agreement, as amended by the First Amendment, insofar as City benefits by the growth of DEVELOPER’s employees and business located in City. City hereby authorizes City’s Director of Planning, Building and Code Enforcement to perform the calculations and make the resulting determinations related to number of employees of DEVELOPER, all as set forth in, and all in a manner consistent with, the revised Section 1.(C)(1) of the Second Amendment.

SECTION 5. The City Council hereby adopts the following as its findings required by Section 12 of the Enabling Ordinance:

- A. Development of the Subject Property in accordance with the conditions of the Amended Development Agreement will promote and provide for orderly growth and development of the Subject Property in accordance with the policies set forth in the current General Plan in that the project described in more detail in the Original Development Agreement, which is not amended as a part of the Amended Development Agreement, for a 2.325 million square foot corporate campus of office, research and development, and manufacturing uses (the “Project”), has been partly constructed with two buildings totaling approximately 400,000 square feet in area, which buildings have been partially occupied by a corporate user and the full build out of the Project will ultimately provide for at least 500 jobs in the City of San José in conformance with the CITY’s Economic Development Policies; and
- B. The Amended Development Agreement remains consistent with the General Plan, Alviso Specific Plan, and Zoning Code of CITY, as those documents existed at the time the Original Development Agreement was entered into and as vested under and through the Original Development Agreement, in that the industrial/office development vested by the Original Development Agreement, including the Planned Development Zoning, Planned Development Permit, and Vesting Tentative Map (File Nos. PDCSH99-05-054, PDSH00-03-027, and PTSH00-03-035, respectively), all conform with and promote orderly development of CITY’s General Plan as well as CITY’s Alviso Specific Plan land use designations of Industrial Park with Mixed Industrial Overlay, and Combined Industrial/Commercial designations as vested through the Original Development Agreement.

SECTION 6. The City Council hereby approves the Second Amendment substantially in the form attached hereto as Exhibit A, and hereby authorizes and directs the City Clerk to execute the Second Amendment in substantially the form approved by this Ordinance on behalf of the City of San Jose within a reasonable period of time after this Ordinance becomes effective.

SECTION 7. CITY understands that CITY and DEVELOPER intend to agree to terms in the Second Amendment that the effectiveness of the terms and provisions of the Second Amendment shall be from December 31, 2008.

SECTION 8. Notwithstanding the actual date that this Ordinance becomes final and effective through its normal course and processing, CITY and DEVELOPER desire, and CITY ordains, that the terms and provisions of this Ordinance shall be deemed effective on and apply retroactively to and including December 31, 2008, *nunc pro tunc*, so that the Amended Development Agreement is not required to expire pursuant to the provisions set forth in Section 1.C(1) of the Original Development Agreement as amended by the First Amendment.

PASSED FOR PUBLICATION of title this 9th day of December, 2008, by the following vote:

AYES:	CAMPOS, CHIRCO, CHU, CONSTANT, CORTESE, LICCARDI, NGUYEN, OLIVERIO, PYLE, WILLIAMS, REED.
NOES:	NONE.
ABSENT:	NONE.
DISQUALIFIED:	NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk